

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

Charles A. Shirley,)
)
 Movant,)
)
 vs.)
)
United States of America,) Case No. 04-0683-CV-W-FJG
) Case No. 02-00061-01-CR-W-FJG
) Respondent.)

ORDER DENYING PETITIONER A CERTIFICATE OF APPEALABILITY

On June 28, 2005, this Court entered an order denying movant's motion to vacate, set aside, or correct sentence (Doc. #10), pursuant to 28 U.S.C. §2255. On July 18, 2005, movant, pro se, filed a motion for certificate of appealability (Doc. #12).

A certificate of appealability will be issued only if the applicant has made a substantial showing of the denial of a constitutional right and has indicated which specific issue or issues satisfy the showing required. 28 U.S.C. § 2253(c)(2) and (3). Additionally, "the petitioner 'must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'" Randolf v. Kemna, 276 F.3d 401, 403 n.1 (8th Cir. 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 n.1 (1983)) (alteration in original). Although this may be referred to as a "modest standard," *id.* (citing Charles v. Hickman, 228 F.3d 981, 982 n.1 (9th Cir. 2000)), petitioner has failed to meet this burden.

Accordingly, it is hereby ORDERED that:

1. Petitioner's motion for certificate of appealability (Doc. #12) is DENIED; and
2. The Clerk of the Court is directed to mail a copy of this Order by regular and

certified mail, return receipt requested, to

Charles A. Shirley
Fed. Reg. #15057-045
P.O. Box 1000
Leavenworth, Kansas 66048

Dated: _August 18, 2005
Kansas City, Missouri

/s/ Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge